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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/717,098 | 11/19/2003 | Donald Carroll Roe | 4981C2C | 7301 |

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THE PROCTER & GAMBLE COMPANY
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| EXAMINER | |
|---|---|
| STEPHENS, JACQUELINE F | |
| ART UNIT | PAPER NUMBER |
| 3761 | |

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| 10/30/2008 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/717,098 | ROE, DONALD CARROLL | |
| | Examiner | Art Unit | |
| | Jacqueline F. Stephens | 3761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *6/30/08*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 6/30/08 have been fully considered and are moot in view of the new rejction

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3, 5-11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason USPN 3559648.

Regarding claims 1, 8, 9, and 14, Mason comprises a topsheet 33, a backsheet 34, and a fecal material storage element (pad 10 at area 25) intermediate the topsheet and backsheet, and an absorbent core 10 intermediate the fecal material storage element and backsheet (Figure 5). The fecal storage element 25 of Mason has laterally opposing longitudinal edges disposed on either side of the longitudinal axis as see in Figure 5. The fecal storage element 25 does not extend contiguously across the longitudinal axis, but instead comprises two panels, each panel 25 extending contiguously between the longitudinal side edges. However, the present invention is

just making integral what had been made two pieces, which is within the level of one of ordinary skill in the art. "..The use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice."); see Schenck v. Nortron Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983 In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)

The fecal storage element has two major faces, a first major face (examiner has designated as F1) oriented towards the topsheet and a second major face (examiner has designated as F2) oriented towards the backsheet. Mason does not specifically disclose a trans-topsheet capacity greater than about 0.20 grams per square inch. However, the specification of the present invention on page 6, lines 1-22; page 7, line 16 through page 8, line 20; page 11, lines 5-7; and page 12, line 30 through page 13 line 29 sets forth the size of apertures in the topsheet and materials for the topsheet and fecal storage element necessary to obtain the desired trans-topsheet capacity. Mason at col. 1, lines 29-40 and lines 53-61; col. 2, lines 6-8, 23-27, 55-74; and col. 3, lines 4-19 teaches similar materials and apertures sizes for the fecal storage element and topsheet. Therefore, Mason inherently includes the claimed trans-topsheet capacity. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed

invention but has basis for shifting the burden of proof as in *In re Fitzgerald,* 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 1.

Regarding claim 3, see, col. 1, lines 34-35 and col. 2, lines 54-56.

Regarding claims 5, the fecal material storage element comprises a cellulosic fibrous structure (col. 2, lines 6-9).

Regarding claim 6, Mason discloses the aperture side in the topsheet ranges from 0.25 to 0.5 square inches (col. 3, lines 12-15), which includes the range of at least 0.3 square mm.

Regarding claim 7, the absorbent article of Mason is a three-dimensional structure. Even if the article was substantially flattened under pressure, it would still be considered a three-dimensional structure.

Regarding claims 10 and 11, Mason teaches the topsheet can have substantially large apertures and apertures of varying sizes, especially in a central region in order to allow semisolid waste material to penetrate to the absorbent layers. Mason does not disclose the exact area of the article having the trans-topsheet capacity. However, Mason recognizes the area having large apertures can be varied and this will affect the ability of the article to hand fecal material (col. 1, lines 53-56, col. 3, lines 4-19). Mason, therefore recognizes the ability to handle fecal material is a result effective variable of size and distribution of the apertures in the topsheet. It would have been obvious to one of ordinary skill in the art to provide the article with the claimed area of trans-topsheet

capacity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

5. Claims 2, 4, 12, 13, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Matthews et al. USPN 4397644.

Regarding claims 4, 12, 17, and 20, Mason discloses the present invention substantially as claimed, see discussion supra. However, Mason fails to disclose the topsheet is bonded to the fecal material storage element at discrete sites. Matthews discloses an absorbent article comprising an apertured topsheet and absorbent layer 14a (col. 3, lines 41-45 and col. 5, lines 25-50) capable of storing low viscosity fecal material. Matthews discloses the integration of the topsheet and fecal storage element is at discrete bond sites of up to 2 cm apart (col. 3, lines 56-63), which is included in the range of 0.5-7.6 cm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to bond the topsheet and fecal material storage element of Mason at discrete sites leaving open areas in the range taught by Matthews. Doing so would provide sufficient integration of the topsheet and fecal material storage element without creating an unpleasantly stiff diaper, which Matthews teaches is to be avoid (col. 5, lines 6-24).

Regarding claims 2 and 18, Mason discloses the present invention substantially as claimed. However, Mason does not disclose the topsheet is treated to be hydrophilic. Matthews teaches an absorbent article in which the topsheet is treated to

be hydrophilic (col. 4, lines 19-21). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the topsheet of Mason to be hydrophilic as taught in Matthews. Doing so would provide a means for improving the flow of fluids to the storage element.

Regarding claim 19, see, '648 col. 1, lines 34-35 and col. 2, lines 54-56.

6. Claims 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason in view of Matthews as applied to claim 4 above and further in view of Jones USPN 3593717 and further in view of Meyer USPN 4798603.

Regarding claim 13, Mason/Matthews shows the fecal material storage element comprises blind holes ('644 Figures 2-4 and col. 4, lines 19-22). However, Mason/Matthews do not discloses the depth of the holes. Jones teaches an absorbent article comprising an apertured topsheet and an absorbent layer (Figures 1-5c, col. 2, lines 27-66 and col. 3, lines 1-9 and 17-51) capable of storing low viscosity fecal material comprising blind holes having a depth of at least 0.75 mm (col. 4, lines 63-71). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apertures of Mason/Matthews to have a depth of at least 0.75 mm as taught in Jones. Doing so would provide a fecal storage element capable of receiving low viscous fluids without leaking.

Mason/Matthews/Jones fails to disclose the depth exist while the storage element is under a load of 31.6 grams per square centimeter. Meyer discloses an apertured layer 18 capable of storage low viscosity material (col. 7, line 63 through col.

8, line 21) that is capable of resiliently compressing during normal use at a pressure of 0.2-0.5 psi (14.06-35.15 g/cm$^2$) approximately that which is normally applied during use by the wearer (col. 10, lines 46-52). It would have been obvious to one of ordinary skill in the art to modify the invention of Mason/Matthews/Jones to maintain the blind-hole depth at the compression level taught by Meyer. Doing so would provide a fecal management element capable of maintaining its dimensions during use.

Regarding claim 15, Mason/Matthews/Jones/Meyer discloses the present invention substantially as claimed; see discussion supra, except for at least fifty percent of the surface area of the second major surface of the fecal storage element being bonded to the core. However, Mason/Matthews/Jones/Meyer recognizes the amount of contact between the fecal storage element and absorbent core can be varied and this will affect the fluid transfer communication from the transport layer to the absorbent body ('603 col. 6, line 64 through col. 7 line 3). Mason/Matthews/Jones/Meyer, therefore recognizes the ability to handle fecal material is a result effective variable of the bonding between the topsheet, fecal storage element and absorbent core. It would have been obvious to one of ordinary skill in the art to provide the article with the claimed percentage of bonding, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Regarding claim 16, the rejection of claims 10 and 11 also applies here.

## *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761